

Segment 5 07/26/2021

*Massachusetts, Michigan, Minnesota, Mississippi and Missouri*

*(A State-by-State Analysis of License Requirements  
for Lenders and Brokers*

Previous states covered Alabama through Maryland (1)

Once again, I'd like to remind readers that I am endeavoring to analyze and interpret hundreds of statutes, rules, regulations, decisions, and opinions from 50+ different states. It is possible that I will relay some inaccurate information (hopefully, rarely), which might be a product of new developments, case law, or administrative rulings, some of which didn't exist as of the publication of these articles, and some of which I may have simply overlooked. If you have authoritative information which contradicts anything I have written or will write, *please* let us know, so we can publish the *errata*. This, not just for my sake, but for that of the readers, who deserve accuracy.

It should be noted that, as to all of those states that have license requirements for consumer loans, it is sufficient if the borrower represents, in writing, that the purpose of the loan is personal, family, or household use, unless the lender or broker has knowledge which contradicts this representation. That appears to be sufficient due diligence on the part of the lender/broker as to this issue.

**21. MASSACHUSETTS:** Massachusetts does not require a license for commercial finance companies. A license is required of any company or sole proprietorship that directly or indirectly engages in the business of making loans or engages, for a fee, commission, bonus or other consideration, in the business of negotiating, arranging, aiding or assisting a borrower or lender in procuring or making loans *for personal, family or household purposes*<sup>1</sup> of \$6,000 or less, and an interest rate that exceeds 12%, regardless of whether such loans are actually made by that company/ sole proprietorship or by another party (i.e. brokers are included).

**22. MICHIGAN:** Nor does Michigan require a license for commercial finance companies. It does require both a license and registration, which appear to be to different protocols, for first and second mortgage brokers.

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Michigan also requires licenses for consumer and/or “regulatory loans” under the Regulatory Loan Act, which defines “loan” or “regulatory loan” as a loan made by a licensee to an individual *for personal, family, or household use*.

### **MICHIGAN REGULATORY ACT:**

[http://www.legislature.mi.gov/\(S\(mgrkqh50igskw1atedvy1zzd\)\)/mileg.aspx?page=GetObject&objectname=mcl-Act-21-of-1939](http://www.legislature.mi.gov/(S(mgrkqh50igskw1atedvy1zzd))/mileg.aspx?page=GetObject&objectname=mcl-Act-21-of-1939) (1939)

You should be aware that the penalties for usury are severe in Michigan. Pursuant to Section 438.41, Act 259, §1 of the Michigan Statutes (1968):

*A person is guilty of criminal usury when, not being authorized or permitted by law to do so, he knowingly charges, takes or receives any money or other property as interest on the loan or forbearance of any money or other property, at a rate exceeding 25% at simple interest per annum or the equivalent rate for a longer or shorter period. **Any person guilty of criminal usury may be imprisoned for a term not to exceed 5 years or fined not more than \$10,000.00, or both.*** [emphasis added]

Definitely not a good idea in Michigan, or anywhere for that matter. The legislatures, and the courts, consider usury a profoundly serious matter. This is possibly the primary reason for getting a license in those states, like California, that fairly exempt lenders and brokers from usury claims.

**23. MINNESOTA:** Minnesota does not require a license for commercial lenders. Mortgage and consumer lenders do need licenses. Any corporation that engages in the making of consumer loans for *personal, family or household use* must be licensed. *Minnesota Statutes §§56.0001-56.26 (1984) and Minnesota Regulation 2675.4100 – 2675.4170 (2007)*. Regulated (consumer) lenders can make loans up to \$100,000, higher if capitalized (see statute below for details as to what “capitalized” means in this context).

### **MINNESOTA MAXIMUM RATES AND CHARGES (CONSUMER LOANS)**

<https://www.revisor.mn.gov/statutes/cite/56.131> (2014)

**24. MISSISSIPPI:** Mississippi is another state in which a commercial finance company does not need to be licensed. A person who, for compensation from borrowers, finds and obtains *consumer* loans or credit cards for borrowers from third party lenders does need a license. No person

shall engage in the business of being a consumer loan broker before posting the bond and obtaining the license as required by this chapter. Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. *Mississippi Statutes § 81-19-5* (2019). I'm quite certain none of us would be comfortable in a Mississippi prison.

A broker or loans of money may not assess or collect an advance fee and can be fined up to \$5,000 for each violation. *Mississippi Code Annotated, sec. 81-19-23* (2019).

### **MISSISSIPPI CONSUMER LOAN BROKER ACT (2019)**

*No consumer loan broker may:*

*(a) Charge or collect any service charge or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall a service charge exceed three percent (3%) of the original principal amount of the loan or a fee of Twenty-five Dollars (\$25.00), whichever is greater;*

<https://law.justia.com/codes/mississippi/2019/title-81/chapter-19/section-81-19-23/>

Violation of this statute is a *felony* punishable by a fine of not more than \$1000 and commitment to the custody of the State Department of Corrections for up to *three years*. Again, not a good place to be.

**25. MISSOURI:** Missouri also elected to exclude commercial finance companies from any licensing requirement. Similar to many other states, mortgage lenders and consumer lenders need a license and need to be registered with. Once again, mortgage and consumer lenders need to be registered. Consumer loans are those in excess of \$500 made for *personal, family or household purposes*. *Missouri Rev. Statute §367.110* (2019)

A broker of loans of "money or property" may not assess or collect an advance fee. No loan broker shall charge, assess, collect or receive an advance fee from a borrower to provide services as a loan broker. The knowing charging, assessment, collection or receipt of an advance fee, in violation of this section, is a class A misdemeanor. *Missouri Revised Statutes §367. 305* (1992). **"Advance fee"** includes any consideration which is assessed or collected prior to the closing by a loan broker. *Missouri Revised Statutes §367. 300(1)* (1992).

Our next segment will cover the States of Montana, Nebraska, Nevada, New Hampshire, and, importantly, New Jersey.